

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

December 1, 2003

CALL TO PODIUM:

Patricia Patula

RESPONSIBLE STAFF:

Patricia Patula, Planner
Trudy Schwarz, Community
Planning Director

AGENDA ITEM: (please check one)

	Presentation
	Proclamation/Certificate
	Appointment
<input checked="" type="checkbox"/>	Joint Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

TITLE:

JOINT PUBLIC HEARING

T-358: An ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, entitled "Regulations Applicable to Particular Zones," Division 21, entitled "CBD Zone, Central Business District," Section 24-160.F.2 to add private educational institution uses in the CBD Zone as a special exception use.

SUPPORTING BACKGROUND:

The permitted uses clause of the CBD (Commercial Business District) Zone (Sec. 24-160F.2) which encompasses Olde Towne, states that uses permitted by right include "all uses listed as permitted and not as special exceptions in all zoning districts. . ."

As requests for various uses in Olde Towne come in to the Planning and Code Administration, all of the other zones need to be consulted (often an arduous task) to determine if the proposed use is permitted by right and can the applicant establish that particular use in Olde Towne.

A category of requests that has increased is for private schools, e.g., driving, gymnastic, ballet, music, etc. There are a number of private schools that have already been given use and occupancy permits in Olde Towne since 1996 when the CBD Zone was established. Only recently did it come to light that in the R-A and C-B Zones, an entity of this nature is allowed only by special exception. Therefore, the existing schools are not permitted by right in the CBD Zone.

These schools are of great benefit to the residents and attendees, and it is not desirable to have them be nonconforming uses. Therefore, the City Attorney has prepared a text amendment that would permit a private educational institution by SPECIAL EXCEPTION.

Adopting this text amendment will make the existing schools legally non-conforming and therefore subject to Section 24-19 "Nonconforming Use of Structures." (See Exhibit 7.) Inserting the use in the CBD Zone by special exception is consistent with the treatment of uses throughout the Zoning Ordinance. Additionally, having the oversight of the Board of Appeals is useful to monitor the parking concerns that these uses can bring.

Attachments: Index of Memoranda, Exhibits

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	11-12-03
	11-19-03
Hearing Date	12-1-03
Record Held Open	
Policy Discussion	

DESIRED OUTCOME:

City Council-record open 32 days, close Jan 2, 2004
Planning Com-record open 18 days, close Dec 19, 2003
Planning Commission recommendation-Jan 7, 2004
Council-policy discussion Jan 19, 2004

Mayor and City Council
Planning Commission
Joint Hearing December 1, 2003

INDEX OF MEMORANDA
T-358

Number	Exhibit
1.	Application
2.	Draft Ordinance
3.	Notice of Public Hearing sent November 12, 2003 to required parties
4.	Legal Ad requesting notice of joint hearing in the November 12 and 19 issues of the Gaithersburg Gazette
5.	Memo dated February 11, 2003, from P&CA Director Russel to City Council re text amendment
6.	Memo from Planner Patula to City Attorney dated October 17, 2002, addressing issue
7.	Excerpt from City Code Sec. 24-19 Nonconforming Use of Structures

TEXT AMENDMENT TO THE ZONING ORDINANCE

In accordance with Article VIII,
Section 24-194, 195, 197, and 198 of the City Code

Application Number	<u>T-358</u>
Filing Date	<u>10-10-03</u>
P.C. Hearing	<u>12-1-03</u>
M&C Hearing	<u>12-1-03</u>
Decision	_____
Decision Date	_____

Application is hereby made to the

- ☐ City Planning Commission, or
☒ Mayor and City Council

for a change in the text of the Zoning Ordinance of the City of Gaithersburg, Maryland.

This change involves Article III, Division 21, Section 24-160. F. 2
to be amended per the attached ordinance.

Applicant/Staff Person Patricia Patula Date October 10, 2003
Address 31 South Summit Avenue, Gaithersburg, Md. 20877



ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE
(CITY ZONING ORDINANCE), ARTICLE III, ENTITLED,
"REGULATIONS APPLICABLE TO PARTICULAR ZONES,"
DIVISION 21, ENTITLED, "CBD ZONE, CENTRAL BUSINESS DISTRICT,"
§24-160.F.2 TO ADD PRIVATE EDUCATIONAL INSTITUTION USES
IN THE CBD ZONE AS A SPECIAL EXCEPTION USE.

Text Amendment No. T-358

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg,
Maryland, in public meeting assembled, that Chapter 24, Article III, Division 21,
§24-160.F.2 be, and it hereby is, amended to read as follows:

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

* * *

Division 21. CBD Zone, Central Business District

* * *

Sec. 24-160.F.2. Uses Allowed.

(a) Permitted Uses

* * *

(b) Special Exception uses.

- | | | | | | | | |
|-----|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * |

(5) Private educational institutions.

* * *



ADOPTED this ____ day of _____, 2003, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2003. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this ____ day of _____, 2003.

SIDNEY KATZ, Mayor
And President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2003, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the ____ day of _____, 2003. This Ordinance will become effective on the ____ day of _____, 2003.

DAVID B. HUMPTON, City Manager



Gaithersburg
A CHARACTER COUNTS! CITY

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330

NOTICE OF JOINT PUBLIC HEARING

The City of Gaithersburg Mayor and Council and Planning Commission will conduct a public hearing at the time and place noted below.

Meeting: MAYOR AND CITY COUNCIL
Application Type: TEXT AMENDMENT
File Number: T-358
Applicant: PATRICIA PATULA FOR THE CITY OF GAITHERSBURG
Day/Date/Time: DECEMBER 1, 2003
Place: COUNCIL CHAMBERS, GAITHERSBURG CITY HALL
31 SOUTH SUMMIT AVENUE

*****IMPORTANT*****

This is a proposal to amend Chapter 24 of the City Code, to allow private education institution uses in the CBD Zone as a special exception use. This is the first public hearing in a series of public opportunities to participate. (A copy of the draft ordinance can be viewed at www.ci.gaithersburg.md.us/notices.) This is the first public hearing in a series of public opportunities to participate. Contact the Planning and Code Administration City Planner (listed below) at (301) 258-6330 if you should have any

Mayor and City Council & Planning Commission meetings can be viewed live on Gaithersburg Cable Television Channel 13, and at anytime, (on demand) via the Internet and Web TV at <http://www.ci.gaithersburg.md.us>.

CITY OF GAITHERSBURG

By: Patricia Patula
Patricia Patula, Planner
Planning and Code Administration



NOTICES SENT THIS 12th DAY OF NOVEMBER, 2003, TO:

APPLICANT AND INTERESTED PARTIES

(A list of interested parties and agencies is available in the file in the Planning and Code Administration.)

MAYOR AND COUNCIL

PLANNING COMMISSION

CITY STAFF

David B. Humpton, City Manager
Frederick J. Felton, Assistant City Manager
Tony Tomasello, Assistant City Manager
Stanley D. Abrams, City Attorney
Mary Beth Smith, Public Information Director
Doris Stokes, Administrative Assistant
Jeff Baldwin, City Web Administrator (via email)



November 6, 2003

Karey Major, Law Section
The Gaithersburg Gazette
P.O. Caller 6006
Gaithersburg, Maryland 20884

Dear Karey:

Please publish the following legal advertisement in the November 12 and November 19, 2003, issues of the Gaithersburg Gazette.

Sincerely,

Patricia Patula

Patricia Patula
Planner

ASSIGN CODE: T-358 Acc. #133649

NOTICE OF PUBLIC HEARING

The Mayor and Council and the Planning Commission of the City of Gaithersburg, Maryland, will conduct a joint public hearing on Text Amendment T-358, filed by Patricia Patula, for the Mayor and Council, on

**MONDAY
DECEMBER 1, 2003
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

The application requests to amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, entitled, "Regulations Applicable to Particular Zones," Division 21, entitled, "CBD Zone, Central Business District," §24-160.F.2 to add private educational institution uses in the CBD Zone as a special exception use.

Further information is available from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Patricia Patula, Planner
Planning and Code Administration



City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@ci.gaithersburg.md.us • www.ci.gaithersburg.md.us

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Ann T. Somerset

CITY MANAGER
David B. Humpton

MEMO TO: Mayor and City Council

VIA: Fred Felton, Assistant City Manager *FF*

FROM: Jennifer Russel, Director
Planning and Code Administration *JR*

DATE: February 11, 2003

SUBJECT: Private Educational Institutions in the CBD Zones

Please see attached memo in which we outline to the City Attorney the history behind private educational institutions (PEIs) in the CBD Zone. In response to the staff's memo, the City Attorney has prepared a text amendment that would permit PEIs as a special exception in the CBD Zone.

At the present time, PEIs are allowed by Special Exception in the R-A and C-B Zones and by overlay in the MXD zone. The staff believes that inserting the use in the CBD zone by special exception is consistent with our treatment of the use throughout the zoning ordinance. Additionally, having the oversight of the Board of Appeals in these instances is useful to monitor the parking concerns that these uses can bring. Parking is typically the only issue that emerges and it can be controlled and directed by the Board's review and oversight and attachment of any necessary conditions to minimize the use's affect in mixed use settings where some impact on neighboring residential might be felt.

All text amendments must be sponsored by either the Mayor and Council or the Planning Commission. Via this memo, staff is asking the Mayor and Council to sponsor the attached text amendment to permit us to advertise it for public hearing. It is the staff's belief that this is a housekeeping matter that would be advisable to complete in a timely manner. Please advise.

cc: Pat Patula.



MEMO TO: Stan Abrams, City Attorney
VIA: Fred Felton, Assistant City Manager
FROM: Patricia Patula, Planner
DATE: October 17, 2002
SUBJECT: Text Amendment to CBD Zone

A recent request for a driving school in Olde Towne triggered a need to review what uses are permitted in the CBD Zone. The permitted uses clause reads as follows:

Sec. 24-160F.2 Uses Allowed.

(a) Permitted uses. All uses listed as permitted and not as special exceptions in all zoning districts, except:

The driving school is considered a private institution of an educational nature. Our recent research brought to light that in the R-A and C-B zones, an entity of this nature is allowed only by special exception. This results in the proposed driving school **not** being permitted in the CBD zone.

Staff did not pick up on the special exception aspect in time to prevent several other schools from being located in Olde Towne. Two recently established are the Lodge School and Gymnastics of America. These were reviewed and approved by the Planning Commission in June 2001 and August 2002 respectively. Other schools currently in Olde Towne are the English House (May 1995), Val's Driving School (May 2001), ESOL Tutoring (August 1995), and Victor Litz Music School (September 1998). The Mayor and Council comprehensively rezoned the Olde Towne area by ordinance in 1997 (O-10-97), so at least two of the schools listed above are "grandfathered" in.

These schools are of great benefit to the residents and attendees, and we do not want them to be nonconforming uses.

We think one way to resolve this would be to create a text amendment that would add private educational institutions to the list of uses allowed by special exception in Sec. 24-160F.2(b). Accordingly, we forward this on to you, and if you think this is the best way to handle this, we ask you to prepare an appropriate text amendment.

Thank you in advance.



on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

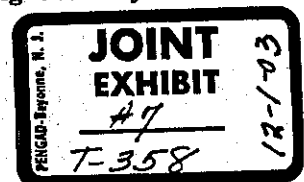
- (a) No such structure may be enlarged or altered in a way which increases its nonconformity.
- (b) Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of destruction as determined by the building inspector, it shall not be reconstructed except in conformity with the provisions of this chapter.
- (c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-19. Nonconforming use of structures.

If a lawful use of a structure or of a structure and premises in combination, exists on March 22, 1965, or on the effective date of an amendment of this chapter, that would not be allowed in the zone under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted to a use not permitted by this chapter in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.
- (b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use on March 22, 1965, or at the time of an amendment of this chapter, but no such use shall be extended to occupy any land outside such building.
- (c) If no structural alterations are made, any nonconforming use of a structure or structure and premises may be changed to another nonconforming use only upon a finding by the city council, after public hearing, that the change is required (i) to preserve a historic structure, or (ii) as part of the renewal, revitalization or restoration of a specific geographic area designated by the city council, or (iii) to prevent a confiscatory taking of the property. In permitting such change, the city council may require appropriate conditions and safeguards to protect and enhance the public welfare.
- (d) Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.



- (e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for eighteen months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the zone in which it is located.
- (f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(Ord. No. O-2-65, art. 1, § 4; Ord. No. O-18-82, § 1)

Sec. 24-20. Repairs and maintenance.

On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement value of the structure; provided, that the cubic content of the structure shall not be increased.

Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-21. Uses under exception provisions not nonconforming uses.

Any use for which a special exception is permitted as provided in this chapter shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such zone.

(Ord. No. O-2-65, art. 1, § 4)

Sec. 24-21.1. Enlargement, relocation, replacement, repair or alteration of nonconforming structures.

Anything to the contrary in this chapter notwithstanding, the planning commission shall be authorized to permit any nonconforming structure, or any structure occupied by a nonconforming use, to be enlarged, relocated, replaced, repaired or structurally altered in any zone upon a finding by the commission that such work will not adversely affect the use or development of any other property, upon such conditions as the commission shall find necessary to avoid such adverse effect.

(Ord. No. O-07-78)